

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
Petition for a Certificate of Public Convenience and)	
Necessity, pursuant to Section 8-406.1 of the Illinois Public)	
Utilities Act, and an Order pursuant to Section 8-503 of the)	
Public Utilities Act, to Construct, Operate and Maintain a)	Docket No. 12-0598
New High Voltage Electric Service Line and Related)	
Facilities in the Counties of Adams, Brown, Cass,)	
Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon,)	
Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler,)	
Scott and Shelby, Illinois.)	

**AMEREN TRANSMISSION COMPANY OF ILLINOIS' MOTION TO STRIKE
CERTAIN PORTIONS OF THE REPLY BRIEF
OF STEVE AND DONNA RUHOLL**

Ameren Transmission Company of Illinois (ATXI), pursuant to Section 200.190 and 200.680 of the Illinois Commerce Commission's Rules of Practice, 83 Ill. Adm. Code §§ 200.190, 200.680, respectfully requests that the ALJs issue a ruling striking certain portions of the Reply Brief of Steve and Donna Ruholl (the Ruholl Family), filed on June 10, 2013. The portions at issue do not conform with Section 200.800 of the Commission's Rules of Practice and Procedure (Rules), which requires that statements of facts in briefs and reply briefs be supported by citation to the record, and forbids parties from raising arguments in reply briefs that are not responsive to other parties' opening briefs. 83 Ill. Adm. Code § 200.800(a), (c). These portions of the Ruholl Family's Reply Brief contain what is essentially testimony submitted outside the schedule in this proceeding and to which ATXI has no opportunity to reply. Moreover, these portions of the Ruholl Family's Reply Brief are not responsive to arguments made in the initial brief of any other party. As such, and for the reasons discussed below, the

portion at issue should be stricken, or in the alternative, the Commission should accord it no weight.

ARGUMENT

The Ruholl Family's Reply Brief includes a lengthy statement of facts concerning the health of their daughter, as well as the statement that the "transmission system might only have one transmission supply because it has distribution connections that can back-feed it if the transmission supply goes out." (Ruholl Reply Br. 2, 4.) No citations to the record are, or can be, provided to support these statements of fact. As such, consideration of the statements of fact, and any arguments based upon them, is improper because it: i) is contrary to the case schedule established by the ALJs in this proceeding and accepted by the Ruholl Family upon their intervention; ii) contravenes the due process rights of all other parties to this proceeding; and iii) violates the procedural rule that restricts reply briefs to responses to arguments made in the opening briefs of other parties. The Ruholl Family did not timely submit testimony in this proceeding, and their Reply Brief is not the appropriate vehicle to do so.

The Commission's Rules require that intervenors "accept the status of the record as the same exists at the time of the beginning of that person's intervention." 83 Ill. Adm. Code § 200.200(e). In their Petition to Intervene, the Ruholl Family acknowledges this obligation, and expressly accepts the status of the record. (Ruholl Pet. to Intervene, p. 2.) Despite having received notice of the proceedings in early 2013, (*see* ATXI Ex. 5.4 (2d Rev.), p. 55), the Ruholl Family did not petition for intervention in this matter until June 3, the day on which intervenors' initial briefs were due. *See* Ruholl Pet. to Intervene, June 3, 2013.¹

The objectionable statements within the Ruholl Family's Reply Brief, were filed approximately four weeks after the evidentiary hearing, and more than two months after the

¹ As of the date of this motion, the Ruholl Family's Petition to Intervene has not been granted.

ALJs' deadline for intervenor testimony. *See* Revised Case Management Plan, Jan. 25, 2013, p. 1 (setting the deadline for intervenors' initial testimony for March 29, 2013). The statements at issue are testimonial in nature, and their inclusion within the Ruholl Family's Reply Brief defies the ALJs' established case schedule, as well as the Ruholl Family's acknowledged obligation to abide by that schedule and accept the status of the record on the date of their intervention.

The Commission's Rules further require that "[s]tatements of fact in briefs and reply briefs should be supported by citation to the record." 83 Ill. Adm. Code. § 200.800(a). The purpose of this rule is to ensure that briefs contain only facts that have been admitted into evidence and subject to cross-examination or response by the parties. *See, e.g. Ill. Comm. Comm'n v. Ill. Gas Co.*, Docket 02-0170, Order (Aug. 6, 2003), p. 14; *Commonwealth Edison Co.*, Docket 92-0121, Order, 1995 Ill. PUC LEXIS 232, *25-26 (April 12, 1995); *see also Fleming v. Ill. Comm. Comm'n*, 388 Ill. 138, 149 (1944) (holding that the Commission's findings "must be based on evidence presented in the case, with an opportunity to all parties to know of the evidence to be submitted or considered, to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal, and nothing can be treated as evidence which is not introduced as such.").

As stated, the Ruholl Family's Reply Brief contains statements of fact concerning the health of their daughter and the operation of the transmission and distribution systems that are not contained in the evidentiary the record. The Ruholl Family did not submit testimony in this proceeding, and the "facts" asserted are set out for the first time in the Ruholl Family's Reply Brief. As such, no party will have an opportunity to conduct discovery or cross-examination with respect to these facts, or to submit testimony to counter the Ruholl Family's assertions.

Furthermore, no party will have an opportunity to respond to the Ruholl Family's contentions in briefing.

Finally, the Commission's Rules restrict the scope of parties' reply briefs to arguments "responsive to any argument raised in any other party's or the Staff's opening brief." 83 Ill. Adm. Code § 200.800(c). Although the factual statements at issue are part of a section of the Ruholl Family's Reply Brief labeled "Reply to ATXI's Initial Brief," the facts in the Ruholl Family's Reply Brief were not in response to ATXI's Initial Brief, nor the initial brief of any other party to this case, including the Ruholl Family.² As such, any argument based on these facts is outside the proper scope of a reply brief and should be stricken or accorded no weight. *St. Louis Pipeline Corp.*, Docket 02-0664, Order p. 10 (May 17, 2006) ("admonish[ing]" an intervenor for waiting until its reply brief to raise an argument, and according that argument "little weight").

CONCLUSION

ATXI does not wish to be unsympathetic. However, because no party has been afforded an opportunity to cross-examine or respond, consideration of these statements in briefing by the Commission would contravene due process and is prejudicial to ATXI. *Ill. Gas. Co.*, Docket 02-0170, Order, p. 14. Therefore, the legal principles discussed above require that the following statements be struck, or, in the alternative, accorded no weight by the Commission:

- Ruholl Reply Brief, page 2, beginning with "We are ..." and ending with "... Pawnee is selected."

² The Pearce Family's Initial Brief discusses the health of their daughter, Emily. The Ruholl Family cites evidence provided by the Pearce Family. The cited material is not the subject of this motion. Instead, ATXI objects to the Commission's consideration of the facts related to the Ruholl's daughter's health, and the Ruholl's apparent argument that the cited materials are applicable to the health of their daughter.

- Ruholl Reply Brief, page 3, beginning with “In other words, paralleling lines ...” and ending with “... if the transmission supply goes out.”
- Ruholl Reply Brief, page 4, beginning with “Our daughter...” and ending with “... medical condition.”

Wherefore, ATXI respectfully requests that the Commission grant its Motion to Strike, or in the alternative, accord the above-listed statements no weight.

Dated: June 13, 2013

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert D. Sturtevant

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on June 13, 2013, I caused a copy of the foregoing *Motion to Strike a Portion of the Reply Brief of Steve and Donna Ruholl* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert D. Sturtevant

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